

SUPREME COURT, U. S.

No. 245

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

WATERMAN STEAMSHIP CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT.

**REPLY OF PETITIONER TO MEMORANDUM
FOR THE UNITED STATES.**

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STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.**

**REPLY OF PETITIONER TO MEMORANDUM
FOR THE UNITED STATES.**

Petitioner's original petition for certiorari filed herein contained three Reasons for Granting the Writ:

1. The decisions of the court below in the instant case and in the companion case of *National Bulk Carriers, Inc. v. United States of America*, 331 F. 2d 407 (C. A. 3, 1963), No. 246, this Term (herein referred to as the "*National Bulk*" case) are in conflict with the decision in three cases decided by the Court of Claims, *Socony Mobil Oil Company, Inc. et al v. United States*, 287 F. 2d 910 (1961), rehearing denied, 289 F. 2d 326 (1961).

2. The opinions below in the instant case and in the *National Bulk* case are erroneous.

3. The issue in the instant case and in the *National Bulk* case is of far-reaching importance to a major segment of the United States shipping industry.

In its Memorandum, the Government has agreed that the conflict described in Reason No. 1 is a valid reason for granting the writ if the conflict should continue for a reasonable period of time.

The Government likewise has recognized the importance of the issue cited by Petitioner as Reason No. 3 for granting the writ. On this point, it should be noted that since the filing of the petition, the following additional pending case involving this same issue has come to Petitioner's attention: *Moore-McCormack Lines, Inc. v. United States*, Court of Claims No. 254-64.

The Government understandably does not recognize the validity of Reason No. 2, which points out the error in the decisions below. In its Memorandum, however, it has paraphrased Section 9 of the Merchant Ship Sales Act of 1946, 50 U. S. C. App., Sec. 1735-1746 ("the Act") in such an argumentative and misleading manner (Resp. Memo., pp. 2-3) as to obscure or confuse the issue and to raise doubt that a serious question exists. The question as heretofore stated by Petitioner (Petit. pp. 2-3) is designed to state the Question Presented objectively, taking into consideration the fact that Petitioner's cost of vessels, for tax purposes, is governed by Section 113(a) of the Internal Revenue Code of 1939, and that the Act simply provides for "an adjustment in the price of such vessel[s]" (the Act, Sec. 1742(a)(4)) but contains no provision as to the income tax effect of that adjustment.

Thus, the proper statement of the Question Presented remains "whether or not the tax cost basis of vessels purchased by Petitioner prior to the enactment of the Act, and whose original purchase price was 'adjusted' downward pursuant to Section 9 [Section 1742] of the Act, is the economic investment in the vessels represented by their original purchase price less the amount of that price adjustment, as determined under the provisions of Section 113(a) of the Internal Revenue Code of 1939" (Petit. pp. 2-3).

In the light of the Question Presented, Petitioner continues to urge as Reason No. 2 for granting the writ, serious error on the part of the courts below in answering the Question Presented in a manner which reduces Petitioner's original investment in the vessels for tax purposes by an amount which was greater than the amount of the adjustment received under the Act. With respect to Reason No. 1 and Reason No. 3, the Government has conceded their validity. With respect to Reason No. 1, however, while recognizing the conflict, the Government suggests (Resp. Memo., pp. 4-5) that action on the Petition be deferred for a reasonable time pending the outcome of the case of *Keystone Tankship Corp. v. United States*, Ct. Cls. Docket No. 240-61, which is presently awaiting decision by the Court of Claims. That case was argued on January 15, 1964 and it seems quite likely that the decision is being delayed pending action upon the Petition in the instant case. Even if a prompt decision were forthcoming which eliminated the conflict, the volume of cases presently in the Tax Court of the United States, some of which might well be appealed to Courts of Appeal for Circuits other than the Third and Fifth, strongly suggests that the present conflict might well recur in any event in the absence of a final decision on the merits in the instant case.

In any event, it is respectfully submitted that in view of the conceded conflict of decisions and importance of the issue, coupled with the error of the courts below, this Court should not defer action but should grant the writ regardless of the pendency of the *Keystone Tankship* case, the other cases cited in the Petition (Petit. p. 9), and those cases cited herein.

Respectfully submitted,

JOHN W. McCONNELL, JR.,
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October , 1964.

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Certificate of Service.

I, JOHN W. McCONNELL, JR., the attorney for the Petitioner herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the day of October, 1964, I served a copy of the foregoing Reply of Petitioner to Memorandum for the United States on Respondent herein, by mailing a copy of the same to the Solicitor General, Department of Justice, Washington 25, D. C. and the Honorable David I. Granger, attorney of record for Respondent in the court below, Department of Justice, Washington 25, D. C.

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